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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,918	12/12/2003	David Battisto	3327.01US01	2259
24113	7590	03/10/2005		
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			EXAMINER ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/734,918	Applicant(s) BATTISTO, DAVID	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-15 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: in figure 4, “2”. It appears that the “2” should be “20”. Additionally, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: bulbous end 36 and cavity 24. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: on page 4, line 9, “tags 28” should be changed to --tabs 28--; on page 5, line 19, “swings” should be singular; on page 6, line 3, “device 10 without having to made device 10 adjustments...” has not clear meaning. Appropriate correction is required for the above objections.

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3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in claims 10 and 15, lines 1 and 2 respectively "dense foam-like" material.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 3 recites the limitation "at least one of said pegs" in 1. There is insufficient antecedent basis for this limitation in the claim. There is only one peg being claim, therefore no antecedent basis for at least one peg, since it implies that there could be more, and there is only one, or at least only one being claimed.

7. Claim 4 recites the limitation "said at least one peg" in 1. There is insufficient antecedent basis for this limitation in the claim. There is only one peg being claimed in the base claim, therefore no antecedent basis for at least one peg, since it implies that there could be more and there is only one, at least only one being claimed.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Nau (4,516,771).

Regarding claim 1, Nau discloses a contact training device for batting practice, comprising: an upright mounting base (post 15); at least one peg support (mounting plate 4) mounted to said mounting base (15) and extending horizontally (it is extending horizontally with respect to post 15); and a flexible, resilient peg (arm 2) attached to said at least one peg support.

Regarding claim 2, Nau shows the peg (arm 2) is an elongate cylindrical shape (see figure 1; also column 2, lines 47-50).

Regarding claim 3, Nau shows the at least one of said pegs is a cylindrical shape having a bulbous end (the broadest reasonable interpretation of bulbous end would include the end having the coil spring 5).

Regarding claim 4, Nau shows the at least one peg (2) is removably mounted (it is attached to the mounting plate 4 which is removably attached to the base 15, which is releasably attached to the plate 4 via nuts 14 and bolts 12) to said mounting base (15).

Regarding claim 5, Nau shows the at least one peg support (plate 4) further comprises a first end having a plurality of tabs (the broadest reasonable interpretation of tabs would include key member 28) extending therefrom and wherein said mounting base (15) further comprises a plurality of notches (the broadest reasonable interpretation of notches would include channel 25) for accepting said tabs for removably interlocking said at least one peg support (4) to support said mounting base (15).

Regarding claim 6, note the rejection of claim 1.

Regarding claim 7, note the rejection of claim 2.

Regarding claim 8, note the rejection of claim 3.

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Regarding claim 9, note the rejection of claim 5.

Regarding claim 10, Nau shows each peg (2 and 3) is made of a resilient plastic material so as not to be permanently deformed which is art recognized equivalent to plastic foam. With regards to the popping sound, such a sound is inherently created upon impact of a bat, providing immediate feedback as to the accuracy of the swing.

Regarding claim 11, Nau discloses a mounting base (mounting plate 4) a plurality of peg supports (the broadest reasonable interpretation of peg supports would include the pair of coil springs 5 and 6) mounted to said mounting base (4); and a flexible, resilient peg (arms 2 and 3) mounted to each of said plurality of supports (5 and 6).

Regarding claim 12, note the rejection of claim 2.

Regarding claim 13, note the rejection of claim 3.

Regarding claim 14, note the rejection of claim 5.

Regarding claim 15, note the rejection of claim 10.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
01 March 2005



MITRA ARYANPOUR
PRIMARY EXAMINER